

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DARCEL MORGAN o/b/o ZANIQUE MORGAN,

Plaintiff,

-v-

No. 04 Civ. 6024 (LTS)(AJP)

JO ANNE B. BARNHART,
Commissioner of Social Security,

Defendant.

-----X

ORDER

Plaintiff, Darcel Morgan, brings this action seeking review of a determination by the Social Security Administration that her daughter, Zanique Morgan, is not eligible for Social Security Disability benefits. The undersigned referred the matter to Chief Magistrate Judge Peck, pursuant to 28 U.S.C. § 636(b)(1). Defendant moved for judgment on the pleadings, asserting that the Administrative Law Judge's decision should be affirmed. Plaintiff did not respond to the motion.

Judge Peck issued a Report and Recommendation on April 21, 2005, after thoroughly reviewing the record before him. Judge Peck recommended that the motion for judgment on the pleadings be granted. After Judge Peck issued his report, plaintiff requested additional time to file written objections to the Report and Recommendation so that she could obtain counsel. On June 7, 2005, Plaintiff, with the assistance of counsel and within the extended time limit set by the undersigned, filed objections. Those objections were largely directed to the substance of the Administrative Law Judge's decision. A court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions." 28 U.S.C. § 636(b)(1). The undersigned finds that it is in the interest of justice that this matter be recommitted to Judge Peck for further consideration in light of Plaintiff's objections.

The undersigned further requests that Judge Peck clarify in his reconsideration his finding and analysis regarding the category of impairments closest to Zanique's impairments. Judge Peck found that the "category of impairments closest to Zanique's impairments, are dealt with in Sections 12.00-12.10 of the listing of impairments [pertaining to mental disorders in general]." (Report and Recommendation, at 24); see also 20 C.F.R. Pt. 404, Subpt. P., App. 1, §§ 12.00-12.10. However, in determining whether Zanique's impairments meet or medically equal the criteria of an impairment listed in Appendix 1 of 20 C.F.R., Pt. 404, Subpt. P, or functionally equal a listing, the Administrative Law Judge paid particular attention to the listings of Section 112.00 as opposed to Sections 12.00-12.10. (R.22). Section 112.00 pertains to mental disorders that may manifest specifically in children under age 18. See 20 C.F.R. Pt. 404, Subpt. P., App. 1, § 112.00 ("The structure of the mental disorders listings for children under age 18 parallels the structure for the mental disorders listings for adults but is modified to reflect the presentation of mental disorders in children."). Therefore, the Court respectfully requests that Judge Peck clarify whether he reviewed Section 12.00-12.10 or 112.00 before determining that "the ALJ was correct to conclude that Zanique did not have a medically equivalent impairment." (Report and Recommendation, at 24).

SO ORDERED.

Dated: New York, New York
September 16, 2005



LAURA TAYLOR SWAIN
United States District Judge